

## **REMARKS**

In response to the above identified Office Action, the Applicant and respectfully requests reconsideration in view of the following remarks.

### **I. Claims Rejected Under 35 U.S.C. § 103**

Claims 1-4, 7-13 and 15-22 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over U.S. Patent No. 6,411,938 issued to Gates (hereinafter "Gates") in view of "Strategic Outsourcing" by Alexander, Marcus and Young (hereinafter "Alexander"). Claims 5 and 6 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Gates in view of Alexander and in further view of U.S. Patent No. 5,987,433 issued to Crapo (hereinafter "Crapo"). Claim 14 stands rejected under 35 U.S.C. § 103 as being unpatentable over Gates in view of Alexander and in further view of U.S. Patent No. 5,117,356 issued to Marks (hereinafter "Marks").

The Applicant submits herewith a Declaration under 37 C.F.R. § 1.132 to rebut the Examiner's *prima facie* case of obviousness. The Declaration is from Alden Blowers, C.E.O. of Cache Banq who is inventor and owner of the present application. The Declaration submitted herewith asserts that the commercial success of the inventor's product that encompasses all of the elements of the present claims is evidence that the claims are not obvious over the cited references. See MPEP§§716.03 and 716.06. The Applicant asserts that the Declaration and accompanying evidence support the position that it is not obvious to combine the cited references to obtain the recited claim subject matter.

The Applicant believes that the Declaration, which is accompanied by Exhibits provides evidence that is of probative value to the non-obviousness of the claimed invention and thus

rebutts the *prima facie* case of obviousness. The Applicant requests that the Examiner consider *Pro-Mold and Tool Co. v Great Lakes Plastic Inc.*, 37 USPQ2d 1626 (Fed. Cir. 1996) in which the court stated that “Pro-Mold’s lack of previous experience in the relevant market combined with its high sales of the patented product provided inference of a nexus between its commercial success and the patented invention and are thus probative evidence of non-obviousness.” *Pro-Mold and Tool Co. v. Great Lakes Plastic Inc.*, at 1630. Further, the Court states that Pro-Mold’s “lack of market power in this field would seem to suggest that it was features of the patented invention that lead to the commercial success.” *Id.* at 1630.

The Applicant believes that the facts of their case are analogous to that of Pro-Mold’s case. Cache Banq is a relative new market entrant with the FLEXACH® service and did not have any market power at the time it was introduced. Rather, it is well known that the payroll services market is dominated by ADP, Paychex and Ceridian. Thus, the success of FLEXACH® is tied to the claimed features of the present application and therefore probative of non-obviousness of the claimed invention.

Further, for reasons set forth below and in the accompanying Declaration, the Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of claims 1-22.

### CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1-22, patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

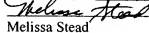
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Melissa Stead 5-18, 2009